



C.M.A.(MD).Nos.904 & 652 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.07.2024

DELIVERED ON : 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).Nos.904 & 652 of 2023
and C.M.P.(MD).No.12875 of 2023

C.M.A.(MD).No.904 of 2023

The Oriental Insurance Company Ltd.,
Represented by its Branch Manager,
Branch Office, Kollemcode,
Chothi Sree complex,
Kannanagam Junction,
Kollemcode Post,
Kollemcode Village,
Vilavancode Taluk,
Kanniyakumari District.

... Appellant/3rd Respondent

Vs.

1.Sarasam

2.Jeena Mol

3.Jisha Mol

4.Ilarish Atheina

... Respondents 1 to 4/Petitioners 1 to 4

5.Anilkumar

... 5th Respondent/1st Respondent

6.Selvaraj

... 6th Respondent/2nd Respondent



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7.The Oriental Insurance Company Ltd.,
represented by its Manager, \
1st Floor, D.D.J. Centre Opp.,
Vadasery Bus Stand,
Nagercoil,
Kanniyakumari District.

... 7th Respondent/4th Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to modify the award dated 03.01.2023 made in M.C.O.P.No.83 of 2019 on the file of the learned Sub Court for MCOP Cases, Kuzhithurai, Kanniyakumari District.

For Appellant : Mr.A.Ilango

For Respondents : Mr.Ananth C.Rajesh for R1
Mr.S.Sivakumar for R5 & R6
RR2, 3 and 7 – No Appearance
R4 – Minor

C.M.A.(MD).No.652 of 2023

Ilarish Atheina
(rep. by her guardian / grandmother Sarasam)

... Appellant / Claimant

/Vs./

1.Anil Kumar

2.Selvaraj

3.The Branch Manager,
The Oriental Insurance Company Ltd.,
Kollemcode, Chothi Sree complex,
Kannanagam Junction,



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Kollemcode Village and Post,
Vilavancode Taluk,
Kanniyakumari District.

4.The Manager,
The Oriental Insurance Company Ltd.,
1st Floor, D.D.J. Centre,
Opp. Vadasery Bus Stand,
Nagercoil,
Kanniyakumari District.

5.Ijin ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records of the award passed in M.C.O.P.No.122 of 2019 on the file of the Motor Vehicles Accident Claims Tribunal / Subordinate Judge, Kuzhithurai, dated 04.01.2023 and modify the award by enhancing the award to the restricted claim of Rs.45 lakhs by awarding another Rs.21 lakhs.

For Appellant : Mr.Ananth C. Rajesh

For Respondents : Mr.C.Karthik for R3 and R4
For RR1, 2 and 5 – No Appearance

COMMON JUDGMENT

C.M.A.(MD).No.904 of 2023 has been filed to modify the award dated 03.01.2023 made in M.C.O.P.No.83 of 2019 on the file of the learned Sub Court for MCOP Cases, Kuzhithurai, Kanniyakumari



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District. C.M.A.(MD).No.652 of 2023 has been filed to call for the records of the award passed in M.C.O.P.No.122 of 2019 on the file of the Motor Vehicles Accident Claims Tribunal / Subordinate Judge, Kuzhithurai, dated 04.01.2023 and modify the award by enhancing the award to the restricted claim of Rs.45 lakhs by awarding another Rs.21 lakhs.

2.The facts in brief:

On 08.12.2018 at about 12.15 p.m., the daughter Jijimol and her father Selvaraj were travelling in a two wheeler TN 75 AF 8316 from Kuzhithurai to Thennavan thottam. Selvaraj was riding the vehicle and Jijimol was the pillion rider. When they were nearing the place of occurrence the lorry bearing registration No.TN-52-2300 was driven by the second respondent in the main petition in rash and negligent manner and hit the two wheeler. As a result of which, they fell down. The front wheel of the tipper lorry ran over selvaraj and Jijimol. Both died on the spot.

3.Jijimol was working as accountant in Indian Medical



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Association, Tamilnadu and drawing salary amount of Rs.20,000/- per month. She was aged about 30 at the time of occurrence. Claiming compensation amount of Rs.44,36,000/- claim application in M.C.O.P.No.122 of 2019 was filed by her daughter.

4. Similarly, M.C.O.P.No.83 of 2019 was filed by the claimants claiming compensation amount for the death of Selvaraj. It is mentioned in the petition that Selvaraj was working as Manson cum Contractor and getting income of Rs.30,000/- per month. He was aged about 56 at the time of the occurrence. Claiming compensation amount of Rs.35,00,000/- that application was filed. Both were tried separately by the Tribunal and separate awards were passed. Since both the claims arose out of the very same accident, the appeals were heard in common and common order is passed.

5. It was resisted by the Insurance Company in both the matters by filing the counter stating that the accident took place because of the rash and negligent driving on the part of the deceased Selvaraj. So the claimants in M.C.O.P.No.83 of 2019 are not entitled for any



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compensation. Apart from that it is also stated that the deceased was not wearing helmet and the lorry bearing registration No.TN 52 2300 did not properly maintained. There is a violation of policy condition and other customary denials were made.

6.Regarding the first aspect of negligence, the Tribunal recorded a finding that due to the rash and negligent driving on the part of the second respondent in the main petition namely Selvaraj S/o Manickam the accident took place.

7.Regarding the compensation in M.C.O.P.No.83 of 2019, the monthly income of the deceased was fixed as Rs.22,500/-. The age was 56. 1/4th amount was deducted towards living and personal expenses. Multiplier 9 was taken and loss of dependency was fixed as Rs.18,22,500/-. To that customary amount was added. Finally awarded Rs.20,31,500/- as total compensation.

8.Against the award granted in M.C.O.P.No.83 of 2019, the Insurance company filed C.M.A.(MD).No.904 of 2023.



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9.C.M.A.(MD).No.652 of 2023 is filed by the claimant dissatisfying over the award amount passed in M.C.O.P.No.122 of 2019.

10.In M.C.O.P.No.122 of 2019, the monthly salary of the deceased was taken as Rs.15,000/-. Half of the amount was deducted towards the personal and living expenses. She was aged about 30 at the time of occurrence. So multiplier 17 was adopted. Loss of dependency was fixed at Rs.22,95,000/-, by adding 50% of the future prospects. To that the customary amounts were added and finally fixed the total compensation amount as Rs.23,72,000/-.

11.Regarding the first aspect of negligence no arguments was advanced by the appellant in C.M.A.(MD)No.904 of 2023. Only quantum was disputed by him. So far as C.M.A.(MD).No.652 of 2023 is concerned what is disputed is also quantum and there is no cross appeal by the Insurance Company as stated above with regard to the negligence aspect.



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12. In view of the grounds of appeal, the first aspect of fixation of negligence by the Tribunal requires no interference and is sustained.

13. Now coming to the quantum in respect of M.C.O.P.No.83 of 2019, it was submitted by the appellant that the Tribunal fixed the monthly income of the deceased on the higher side. As noted above, the monthly income of the deceased was fixed as Rs.22,500/-. The learned counsel for the appellant would submit that it must be reasonably fixed as Rs.14,000/- per month. Ex.P22 was produced by the claimants, wherein, the salary of the deceased was mentioned as Rs.900/- per day. As admitted by the claimants, the deceased was only Mason by profession and also doing the contract work. How Ex.P22 was issued is not clear on records. And the person who issued the certificate also was not examined on the side of the claimant. Reading of the certificate shows that it was issued by one VRNDAVAN constructions, Kanjampuram. In the absence of any evidence on the part of the claimant, regarding the author of the document, it is not reliable. So that is excluded from the consideration.



14. Now coming back to the fixation of compensation. A mason by profession during the relevant time, would have earned not less than Rs.600/- per day. So we can fix the average monthly income of the deceased notionally at Rs.15,000/- per month. On that basis the recalculation must be made. Considering the age of the deceased at the time of occurrence is 56, to that 15% of the future prospects must be added $\text{Rs.15,000} + \text{Rs.1,500} = \text{Rs.16,500/-}$. From that $\frac{1}{4}^{\text{th}}$ has to be deducted. $(\text{Rs.16,500} - \text{Rs.4,125} = \text{Rs.12,375/-}$. Multiplier 9 was adopted. $(\text{Rs.12,375} \times 9 \times 12 = \text{Rs.13,36,500/-})$ So the loss of dependency is fixed at as Rs.13,36,500/-. Loss of estate is reduced to Rs.15,000/-. Loss of Funeral expenses is also reduced to Rs.15,000/-. The claimants 1 to 3 are entitled Rs.40,000/- each towards the loss of consortium. The fourth petitioner is not entitled for any consortium, since she is only granddaughter.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	<i>13,36,500</i>
2.	<i>Loss of Estate</i>	<i>15,000</i>
3.	<i>Funeral expenses</i>	<i>15,000</i>
4.	<i>Loss of Consortium (40,000 x 3)</i>	<i>1,20,000</i>
	<i>Total</i>	<i>14,86,500</i>



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15. Accordingly, the quantum of compensation is reduced in this way.

16. In respect of C.M.A.(MD).No.652 of 2023 the learned counsel for the appellant would submit that the deceased was having only one child. The salary taken by the Tribunal is not proper and also deduction. The Tribunal ought to have deducted 1/3rd of the amount towards the personal and living expenses.

17. Per contra, the learned counsel for the Insurance Company would submit that Ex.P38 was not properly proved. There was no seal by the issuing authority. According to him, the total compensation amount ought to have been fixed only at Rs.21,00,000/-.

18. The Tribunal committed some calculation mistakes in arriving the loss of dependency. Hence, we have to recalculate the same. Now we will go to the evidence on record on the assessment of compensation. As mentioned above, Jijimol was working as accountant in Indian Medical Association, Tamil Nadu. To prove the same, Ex.P8, the salary certificate



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was produced. Indian Medical Association is a statutory body. It reads that she was drawing a monthly salary of Rs.15,000/- per month. Since it is a statutory body, we can take that the monthly salary, which was drawn by the deceased as Rs.15,000/-. So it was rightly fixed by the Tribunal. 50% of the amount is added towards future prospects (Rs.15,000 + Rs.7,500 = Rs.22,500). It was submitted that the deceased having matrimonial issue with her husband. Hence, they are living separately. On that aspect half of the amount is deducted towards the personal and living expenses (Rs.22,500 – Rs.7,500 = Rs.15,000). Considering the age 17 multiplier was adopted, which is also correct. So the loss of dependency arrived as Rs.30,60,000/- (Rs.15,000 x 12 x 17 = Rs.30,60,000/-). To that other customary amounts are added as follows and the award is enhanced.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	30,60,000
2.	<i>Loss of Estate</i>	15,000
3.	<i>Funeral expenses</i>	15,000
4.	<i>Loss of parental Consortium</i>	40,000
	<i>Total</i>	<i>31,30,000</i>



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19. Accordingly, C.M.A.(MD).No.904 of 2023 is partly allowed.

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(i) The quantum of compensation amount is reduced to **Rs.14,86,500/- (Rupees Fourteen Lakhs Eighty Six Thousand and five hundred only)**, which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of **Rs.14,86,500/- (Rupees Fourteen Lakhs Eighty Six Thousand and five hundred only)** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are permitted to withdraw the entire award amount of **Rs.14,86,500/- (Rupees Fourteen Lakhs Eighty Six Thousand and five hundred only)** after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition stands closed.



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20.The C.M.A.(MD).No.652 of 2023 is allowed.

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(i) The quantum of compensation amount is enhanced to **Rs.31,30,500/- (Rupees Thirty One Lakhs Thirty Thousand and five hundred only)**, which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of **Rs.31,30,500/- (Rupees Thirty One Lakhs Thirty Thousand and five hundred only)** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the same shall be deposited before any Nationalized Bank. The claimant is entitled for the entire compensation amount of **Rs.31,30,500/- (Rupees Thirty One Lakhs Thirty Thousand and five hundred only)**, which is ordered to be deposited in any one of the nationalized bank until she attain majority and the grandmother namely Sarasam, is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.



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(iv) Consequently, connected miscellaneous petition stands closed.

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02.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Sub Court for MCOP Cases, Kuzhithurai,
Kanniyakumari District.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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